

Recent Court Rules Amendments and Recurring Issues

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Topics For Today

- Common errors resulting from lack of attention to court procedural rules
- Public accessibility of court records
- The new timing system
- Transcripts of audio-visual exhibits
- Pending rules proposals
- Service contact clutter

Errors Are Avoidable – Part 1

- Attorney's staff were unable to sign in to E-MACS due to a forgotten password
 - Could not reset password themselves, because they no longer had access to the email address of record
 - Delay meant appeal was not timely filed
- Attorney argued appeal “would have been timely filed absent the computer problem”
- Appeal dismissed, since E-MACS *was* operational at the time staff attempted to file

Jurca v. Jurca, No. A19-0350 (Minn. Ct. App. March 26, 2019)
(order)

Errors Are Avoidable – Part 2

- 2/17/2020: U.S. District Court for Minnesota restricts access to court documents due to lack of knowledge of redaction processes

This is an announcement e-mail message generated by Court action through the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

We have recently discovered that some documents filed by parties with redactions have not been properly redacted. It appears that some parties and counsel have not always been using the redaction tools in Adobe, but have been doing the redactions in Word by using a solid rectangular box to cover up the redacted material. Although this covers up the information, it does not remove the information to be redacted. A member of the press discovered this and was able to remove the solid box and uncover the redacted information.

Effective immediately, the Court has restricted access to all documents (dating from 2015-present) where the docket text indicates a redacted document was filed. Court staff will manually review these filings and release the restriction as appropriate and as soon as we verify that the documents were redacted correctly. If you require immediate access to a document that is now restricted, please call the CM/ECF Help Desk at 612-664-5155 or email at ecfhelpdesk@mnd.uscourts.gov. The document will be reviewed for compliance and corrected if necessary and released immediately thereafter.

The Court does not endorse a specific redaction tool. I have linked to instructions on [how to flatten/sanitize a document](#) utilizing Adobe Acrobat Pro 2017 as a reference only. This will be incorporated into CME/ECF training going forward.

Effective immediately, the Court will mark newly filed and improperly redacted documents as filed in error and request they be re-filed using the appropriate redaction methods.



Remember to Read the Rules

- Court rules are regularly amended
 - Wide-ranging amendments in 2015 facilitated transition to statewide e-filing
 - Juvenile Protection rules rewritten in 2019
 - New timing & exhibit transcription rules adopted in 2020
 - Other proposals under consideration
- Some rules apply to all e-filed documents
 - General Rule of Practice 11 (restricted identifiers)
 - General Rule of Practice 14 (e-filing and e-service)
 - Rules of Public Access to Records of the Judicial Branch

Public Access Rules!

- These rules govern access to all information held by Minnesota's courts
 - Not the Minnesota Government Data Practices Act
- Presumption is public access
- Assume the world will see everything filed with the court
 - Many confidentiality laws don't apply to court filings
 - HIPAA, FERPA, etc. do not apply
- There must be a specific legal basis to make things non-public

What is Non-Public?

- Public Access Rule 4 lists non-public case records
- Judges can issue protective orders limiting access to otherwise public case records in individual cases
- However, the judge must “make findings that are required by law, court rule, or case law precedent”
Public Access Rule 4, subd. 2
- Required findings vary based on the case type and the document type

Stipulation ≠ Confidentiality

- The late artist Prince was divorced in 2007
- Records were sealed based on parties' stipulation, and the parties relied on confidentiality during negotiations
- In 2016, the *Star Tribune* petitioned for access to the court records
- Over the objection of the surviving ex-spouse, the records were made public

Sensitivity \neq Confidentiality

- The identity of a child sexual assault victim is, generally, confidential in a criminal case

Minn. R. Pub. Acc. 4, subd. 1(m)

- The child's identity would also be confidential in a related juvenile protection case

Minn. R. Juv. Prot. P. 8.04, subd. 2(j)

- But if there is a custody, divorce, or OFP case, the child's identity is presumptively public, since no rule makes the identity non-public

Medical Records vs. Medical Information

- “Medical records” are non-public:
 - Records from medical, health care, or scientific professionals, that relate to an individual’s health or genetic information

Minn. R. Pub. Acc. 4, subd. 1(f)

- Medical information is public:
 - Any party can include information from non-public documents in public court filings as long as it is necessary and relevant to the issues being addressed by the court

Minn. R. Pub. Acc. 4, subd. 4

What could go wrong?

“The days of attorneys being able to ignore the computer and shift blame to support staff in the event of an error are gone. The consequences are simply too serious. ... It is the responsibility of *counsel* to ensure that personal identifiers are properly redacted.”

(emphasis in original)

Allstate Ins. Co. v. Linea Latina De Accidentes, Inc., No. 09-3681, 2010 WL 5014386 (D. Minn. Nov. 4, 2010)

eFiling Non-Public Information

- “Confidential” ≠ “Sealed”
- Filers must designate everything as “Public”, “Confidential” or “Sealed”:

Filing Comments*

Is Document Public, Confidential, or Sealed?



- Unless specific rule authorizes non-public filing, need an order
- In general, filers can quote from non-public documents in public documents



The Federal Timing System

- In 2009, the Federal Rules of Civil Procedure switched to a simplified system for calculating rule-based deadlines
 - All days (including weekends and holidays) are counted for calculating deadlines
 - If the deadline falls on a weekend or holiday, the deadline continues to the next business day
- In 2016, the MSBA petitioned for similar amendments to Minnesota's state court rules

The State Timing System

- The petition was reviewed by several advisory committees
- The result is a new timing system in the following sets of rules:
 - Rules of Civil Procedure
 - General Rules of Practice for the District Courts
 - Rules of Civil Appellate Procedure
- Went into effect January 1, 2020
 - Applies to pending cases unless the court finds the new deadlines would not be feasible or would work an injustice

New Rules for Calculating Time

- For periods measured in days or longer unit of time:
 - Exclude day of event that triggers the period
 - Count every day, including weekends and legal holidays
 - If it ends on a weekend or legal holiday, go to next day that isn't a weekend or legal holiday

Minn. R. Civ. P. 6.01(a)(1)

- Most rule-based deadlines are now 7-, 14-, 21-, or 28-day periods

New Rules for Calculating Time

- For periods shorter than 7 days:
 - Weekends and legal holidays are excluded from calculating *if* specifically stated in the rule
- For periods measured in hours:
 - Count every hour; if end falls on a weekend or legal holiday continue to next day that isn't a weekend or legal holiday

Minn. R. Civ. P. 6.01(a)(2)-(3)

“Last Days” and “Next Days”

- The “last day” ends at:
 - 11:59 p.m. local Minnesota time if you are e-filing
 - For non-e-filers, when the court administrator’s office is scheduled to close
- The “next day” is determined by:
 - Counting forward when the period is measured after an event
 - Counting backward when the period is measured before an event

Minn. R. Civ. P. 6.01(b)-(c)

Service Can Extend Deadlines

- When a deadline is triggered by service of a document (such as a notice, a motion, etc.):
 - The deadline is extended by **three days** if the document is served by mail
 - The deadline is extended by **one day** if the document is served by means other than mail, and is served after 5:00 p.m. local Minnesota time

Minn. R. Civ. P. 6.01(e)



What's a “Legal Holiday”?

- Definition of “legal holiday” is clarified:
 - Days listed in Minn. Stat. § 645.44, subd. 5 as holidays for any statewide branch of government; **and**
 - Days the U.S. mail does not operate
- Eliminates other federally- and county-designated holidays
- If January 1, July 4, November 11, or December 25 falls on a weekend, adjoining weekday is considered a holiday

Minn. R. Civ. P. 6.01(d)

Appellate Timing Changes

- Generally:
 - **20-day** periods become **21-day** periods
 - **10-day** periods become either **7-day** periods or **14-day** periods
 - **5-day** periods become **7-day** periods
- Some three-day periods include weekends and holidays; others do not
 - *State v. Hugger*, 640 N.W.2d 619 (Minn. 2002), is superseded for timing in civil appeals
- Consult rules to confirm - appellate deadlines are often construed strictly



New Rules for Transcripts of Audio/Visual Exhibits

- In today's world, courts regularly admit videos from body cams, dash cams, and smartphones
- It is often difficult to discern what was said in these video
- Court reporters wanted clarification of their obligations with respect to audio-video (A/V) exhibits
- **Point of consensus:** Court reporters are not finders of fact, and do not resolve disputed questions about what was said on a video

Pre-March 1, 2020 Rules

- **In civil appeals:**

- Court reporters transcribe A/V testimony (video depositions)
- Court reporters do not transcribe A/V exhibits

- **In criminal appeals:**

- If an exhibit's proponent offered a transcript and the parties stipulate to accuracy, that transcript becomes part of the record on appeal
- Otherwise, the court reporter transcribes the A/V exhibit, but need not certify the transcript is accurate



Post-March 1, 2020 : Criminal Cases at Trial Courts

- Trial courts cannot require transcripts of A/V exhibits
 - Parties can offer illustrative transcripts of A/V exhibits
 - Illustrative transcripts don't replace the A/V exhibits

State v. Steward, 643 N.W.2d 281, 293 (Minn. 2002)
 - Court reporters are prohibited from transcribing A/V exhibits, even if the parties/judge want them to
- Rules do not preclude requiring proponents to demonstrate admissibility of A/V exhibits by other means

Post-March 1, 2020: Civil Cases at Trial Courts

- Rules amendments do not apply to civil cases at the trial courts
- Given the prevalence of smartphones and other devices that can record video, A/V exhibits are not uncommon in civil cases
- As in criminal cases, judges can require proponents of A/V exhibits to demonstrate admissibility
 - Questions of relevance, cumulative nature, undue prejudice, etc. continue to be within the discretion of the trial judge

Post-March 1, 2020 : Cases on Appeal

- If a case is appealed, A/V exhibits and any illustrative transcripts admitted by the trial court become part of the record on appeal
- If no transcript of an A/V exhibit was admitted, either party to the appeal can request a transcript
 - Court reporter can either transcribe exhibit, **or** require exhibit's proponent to provide a transcript within 30 days, which the court reporter may correct before filing
- Court reporters need not certify transcripts of A/V exhibits
 - Parties can dispute accuracy in appellate briefs

Pending Rules Proposals

- The Supreme Court is considering proposals to:
 - Allow court staff to reject filings for failure to properly separate non-public documents/information
 - Expand administrative striking of filings, and shorten the cure period
 - Convert Form 11.2 to a cover sheet for all non-public documents
 - Clarify the definition of “restricted identifier”
 - Make paternity cases public from their inception
 - Provide that medical records are non-public only if the filer designates them as non-public



Avoid Multiple Service Contacts

[illegible]

Requirements for Service Contacts – External Filers

- Designate an email address for receipt of service in each individual case (per Minn. Gen. R. Prac. 14.02)
 - Does not have to be filer's main work email address
 - Service contact emails are public records
- Can use group email addresses or eFS Administrative Copies to send to multiple recipients
 - Avoids cluttering up court record with unnecessary service entries
 - Must comply with Minn. Gen. R. Prac. 14.02
- NO designating service contacts for other parties

Questions?

